IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7908 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATBHAI TRIBHOVANDAS SONI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7908 of 2003

M/S THAKKAR ASSOC. for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 11/09/2003

ORAL JUDGEMENT

The petitioner, by way of this special civil application has challenged the order passed by the

District Magistrate, Amreli on 18.5.2003 in pursuance of the powers conferred upon him by sec. 3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act" for short) directing the detention of the petitioner under the said Act. IN pursuance of the said order,the petitioner came to be arrested on 18.5.2003.

The grounds as served upon the petitioner and placed on record reveal that the petitioner was licence holder of fair price shop for the distribution of essential commodities to the customers at subsidise rate as per the Essential Commodities Act and the Control Orders notified under the said Act. Accordingly, the said shop is situated at village Barbatana, Taluka Rajula, district Amreli. In addition to essential commodities, like wheat, rice, sugar, edible oil, the distribution of kerosene at subsidise rate was also entrusted to the petitioner. While the shop and record came to the checked and inspected by the Mamlatdar, Rajula during 15.3.2003 to 18.3.2003, he found gross irregularities and illegalities. The grounds reveal that it is alleged against the petitioner that the petitioner indulged in the activities of disposing of the essential commodities like wheat, rice, sugar etc. either preparing fictitious bills and/or supplying less quantity to the ration card holders. It is also alleged that the persons not residing in the village were shown by the petitioner to have received the supply of essential commodities, while, in act, this bulk was disposed of by the petitioner in the open market at the higher profit. When in the presence of panchas, the stock came to be checked by the Mamlatdar, the stock allotted to the petitioner's shop was either found missing or was found less then the stock ought to be as per the record. It was also revealed that on different occasions such lapses on the part of the petitioner was found and his deposit even to the tune of Rs. 5000/ paid to the Government was confiscated. Ultimately, after taking into consideration all these aspects and the papers, the District Magistrate, Amreli came to the conclusion that activities of the petitioner can be prevented only if he is detained under the PBM Act because even if prosecutions are filed, the illegal activities of the petitioner could not be prevented. In the same way, even if the departmental proceedings are taken, since there are provisions of appeal/revisions etc., the petitioner could not be prevented from acting prejudicial to the maintenance of supplies of commodities essential to the community and hence the order impugned in this petition.

Ld. advocate Mr. NK Pahwa for M/s. Thakkar Asso., ld. AGP Ms. Mita Panchal and Ld. Addl. Central Government Standing Counsel Ms. PJ Davawala were heard at length. The affidavit filed by the detaining authority and by the State Government and Central Government are also taken into consideration.

Out of various grounds and contentions raised on behalf of the petitioner and controverted by the opposite side, it appears that this petition can be disposed of and discussed with respect to the contention of the petitioner about supply of illegible documents with the grounds. My attention was drawn to the ground (p) of the petition, wherein the petitioner has mentioned various documents which are illegible partly or wholly. Some of the documents especially placed at page 497, 351 and 513 along with other documents were perused, it clearly transpires that the documents placed at page 497, 351 and 513 are ration cards and copy furnish to the petitioner are certainly illegible. When illegible copies are furnished to the detenu, the right to make effective representation is said to have been infringed. Even out of documents supplied to the detenu, if single copy found illegible, the detenu's right under Article 22(5)of the Constitution of India is infringed, consequently, the order of detention ordinarily results in quashing and setting aside. The Division Bench of this Court in the matter of Pokhrajbhai Sohanbhai Chandel vs. District Magistrate, Surat & Ors.,as reported in 1991(2) GLR p. 753 has taken the same view. In this view of the matter, the order impugned in this petition is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 18.5.2003 by the District Magistrate, Amreli under the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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